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ANNUAL ADDRESS OF THE PRESIDENT,

J. W. POWELL.

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OUTLINES OF SOCIOLOGY.¹

By organized association men live together in bodies politic. That men may live in peace, render one another assistance, and act together as units for mutual protection, is the purpose subserved by organized association. In order that men may associate, their conduct must be regulated. For the regulation of conduct there must be organization, and the plan upon which a body politic is organized depends upon the nature of the regulation for which it is used—organ is adapted to function.

The organization of the body politic constitutes the State.

Again, there must be—

First, some method of determining the particulars of conduct that require regulation and the quality and quantity of regulation required.

Second, there must be means of enforcing regulation.

Third, there must be means of determining whether conduct conforms to rule.

The machinery established by a society for accomplishing these purposes constitutes Government.

Yet again, there are the rules which the body politic determines to be necessary for peace, mutual assistance, protection, and the common welfare, and these constitute the Law.

The science of sociology, from the nature of the functions of social organization, may be fundamentally divided into three sub-

¹"The Saturday Lectures," &c., pp. 60-82; also, separate as "Saturday Lecture" No. 4.

jects: the constitution of the state, the form of the government, and the regulation embodied in the law—the *state*, the *government*, the *law*.

THE STATE.

A state is a body politic—an organized group of men with an established government and a body of determined law. In the organization of societies units of different orders are discovered. A society of the highest or first order is made up of a number of societies or groups of a second order, and these may again be made up of a number of groups of a third or fourth order. The term *state* as here used embraces the entire body of men included in the largest unit (and consequently all the men of each subordinate unit) when it refers to the body politic as a group of men, and when it refers to the organization it includes the constituent plan of the largest and its included units. It should be noticed that this use of the term state is not consistent with a common practice in this country, but we may illustrate by reference thereto. The term *state* would thus be synonymous with the United States, including its several units of states, counties, townships, cities, wards, and all other subordinate divisions. The term state, then, is used to designate an organized body of people of the highest order, embracing all its subsidiary organizations.

SOCIOLOGIC CLASSES.

In the foregoing characterization of the state it has been considered as a body politic organized for civil government, that is, for the regulation of the conduct of the individuals of the state as they are related to one another. But the conduct of the members of the state, or of the entire body politic, may have relations to other bodies politic; so that conduct must be regulated in its internal relations and in its external relations.

Now, the relations of state to state may be regulated by common agreement, and they are thus regulated to a large extent. But

this regulation is imperfect and weak from the fact that no common government is organized to which all the states are alike obedient. The lack of such a common government for states leads to the settlement of disputes by war. Each state prepares itself to enforce its wishes or defend its rights by resort to arms. It seems probable that in the earliest stages of society all able-bodied men take part in its military affairs. But very early a differentiation is discovered by which a part only of the men belong to the army; and thus we have the *military* class as distinguished from the *civil* class.

In all governments which have hitherto existed, human conduct has been regulated in its relations to supernatural beings. It has always been believed that the welfare of mankind depends largely, or even primarily, upon the will of the gods, or of one god—the Supreme Ruler of the Universe.

The relation of man to his god gives rise to religion. The conduct involved is religious conduct; and hence religion comes to be an important factor in determining the constitution of the state, the nature of the government, and the character of the law.

Thus in the constitution of the state we find three classes of people more or less distinctly differentiated: the civil, the military, and the priestly. As these classes appear in the constitution of the state they also affect in varying degree the form of the government, and the relations arising therefrom are regulated by law.

SOCIAL RANKS.

In many stages of society grades, or ranks, of people are discovered, based upon heredity, possession of land, wealth, and other circumstances giving rise to aristocracies—common people and slaves, patricians and plebeians.

CORPORATIONS.

In many states two grand classes of organizations are found. The first class is directly related to government and embraces the organi-

zations mentioned above as grouped in different orders. The second class is indirectly related to government. These organizations serve a variety of purposes. Men are organized into societies for religious, charitable, educational, industrial, and other ends, and such societies will here be called *corporations*. These organizations of the minor class, unlike those of the major class, do not constitute a part of the government, but they form a part of the state and must necessarily be considered in the plan of the state. While not a part of the government in any important way they are connected therewith. The regulation of conduct involved in the successful working of such corporations may be immediately determined by the bodies of men severally involved, and expressed in charters, constitutions, by-laws, and rules of order. But over all these is the law of the government, with which the rules of laws of the several minor organizations must conform, and for the ultimate enforcement of which government is to a large extent responsible. Thus we have the major and minor organizations of the state, the major and minor laws of the state, and the government of the state directly enforcing the major laws and indirectly enforcing the minor laws.

The science called Sociology in its three great divisions—the state, the government, and the law—deals with all organizations of the people for whatsoever purpose they may be formed.

A part of the regulation of a state belongs to the major, another part to the minor, organizations of the state, but the functions of the two classes of regulation are not clearly and permanently differentiated. A particular system of regulation may be relegated now to the government and now to a society of the minor class, or the system of regulation may be divided between them. For example, the government may entirely control a system of education, or the system of education may be entirely controlled by minor societies; or, again, a part of the educational system may belong to the government and a part to minor societies. The boundary lines between major and minor regulation are ever shifting.

A STATE IS A PLEXUS OF ORGANIZATIONS.

In the foregoing statement it is seen that the grand unit of social organization, the state, is itself composed of many minor organizations, forming units in a descending series, so that the state has a compound structure. It also has a complex structure. Before defining this complexity an illustration from biology may be in place.

An animal is composed of many organs performing different functions,—the organ of thought, the organs of breathing, the organs of digestion, the organs of circulation, the organs of locomotion, and so forth. Running through all these organs and forming a plexus with them, are the systems of tissues—the nervous, vascular, and muscular systems—the whole forming a complicated system of organs and tissues, rendering the organism excessively complex in physical constitution.

In the examination of the constitution of any particular state it will usually be that one system of organization permeates and pervades other systems in such a manner that the individual state is excessively complex. Through the series of units into which the state is organized for the purposes of government, both classes and ranks are interwoven, and through the government units—the classes and the ranks—corporations are interwoven.

In the Muskoki Confederacy there are forty-nine tribes, each one having a government of its own. But these forty-nine tribes are organized in such a manner that a common government is provided for the whole. Now, the confederacy is the grand unit, the tribes are units of a second order. But the clans of one tribe are also the clans of another, so that each clan is distributed through many tribes, and each clan has a government of its own, subsidiary to the government of the tribe, and again subsidiary to the government of the confederacy. The organization for a clan is woven through the organization for a tribe in such a manner as to make the constitution of the state complex.

In those states where the organizations which we have here

called corporations are highly developed, the corporations themselves render the constitution of the state complex. Church organizations do not conform to state lines, but extend their operations and their control over their own members regardless of political divisions.

All states that have been studied have been thus found both compound and complex. Such are the essential characteristics of the social organization of mankind into states.

THE GOVERNMENT.

The differentiation from the state of an organized system of regulation gives rise to government. If a condition of society could exist in which each member in the state should take an equal and like part with all the others in the regulation of conduct, the state would be without a government in the sense in which that term is here used; but in the bodies politic which are known certain individuals are selected by one or other process to perform special functions in the regulation of the conduct of the people composing the state. The government is the sociologic organ differentiated from the state for the regulation of conduct.

The functions to be performed by a government are of three classes—legislative, executive, and judicial. For if conduct is to be regulated it is necessary—

First, to determine in what particulars, and to establish the rules. This gives the law-making power, which will here be denominated the *legislative* department.

Second, to provide machinery for the enforcement of the law. This is here denominated the *executive* department.

Third, to interpret the law. In society the particulars of conduct and the relations of conduct are vastly multifarious, approaching infinity. The formulated rules of conduct—the law—can never so keep pace with conduct itself that every specific act of social life shall have its corresponding formulated rule. It is therefore necessary that the general rules embraced in the law be interpreted and

applied to the specific act. This is usually done by the individual, who is supposed, and whose duty it is, to know the laws of the state ; but the individual may yet have imperfect knowledge. Still, as a member of the body politic, his conduct has its effect upon others who themselves may have imperfect knowledge of the law and its application to specific acts. This imperfection of knowledge necessitates an interpretation of the law. Again, bias of interest, bias of prejudice, and bias of passion, all have their effect in modifying individual opinion relating to the law. Under these circumstances it is found necessary for the state to devise, as a part of its government, some organ for the interpretation of the law in its application to specific acts. This gives rise to the *judicial* department of government.

These three great functions have never been clearly differentiated in the organization of a government ; but the distinctions have usually been perceived and a partial differentiation of organs is ever found.

In the constitution of the state, it has been seen, three grand classes arise—the *civil*, the *military*, and the *religious*. Wherever in the state such classes appear, the form of government is adapted to the regulation which the constitution of the state demands, and in this manner the functions of government may be classified as civil, military, and religious—the military government inhering in the army, the religious government in the priesthood : and armies and priesthoods are constituent parts of such governments.

Usually in all stages of society, military government is entirely subordinate to civil government, but there are times in the middle stages of society when the military government assumes inordinate proportions, so that the civil government becomes subsidiary thereto ; but such military governments performing civil functions are ephemeral.

Again, in the constitution of the state, religious organizations invariably constitute an important factor. In the lowest tribes a priesthood is a part of the government. In certain stages of society

a priesthood sometimes acquires inordinate powers, and ecclesiastical, or religious, governments are organized ; but such governments arise only occasionally and are ephemeral.

In the constitution of the state two classes of organization are found—those relating directly to the government, called the major organizations, and those relating indirectly to the government, called the minor organizations, or corporations ; and each organization develops from its own body of members a government of its own, through which, in part, it is related to the government of the state and to other organizations of the minor class. These minor organizations are also directly related to the government of the state and to one another through the individuals of which they are composed.

Government is the specialized organ for the regulation of the conduct of the individuals of the state, and is functionally divided into the legislative, executive, and judicial departments, with a still further functional division running through these, giving civil, military, and religious government. To the government of the state, in its several units and classes, the government of corporations is subsidiary and obedient.

THE LAW.

The law is composed of the rules of conduct which the government endeavors to enforce. These rules of conduct control the individuals of the state in their relations to one another. Conduct, in its relation to the individuals involved, is either directly or indirectly personal. Conduct may be directly personal in its relations to two or more individuals, or it may be indirectly personal in that it affects the relations of the individuals through the medium of property. The first gives rise to what I shall denominate *personal* law, the second to *property* law.

Again, in the organization of the body politic, minor bodies have been described, and designated as *corporations*, including in the term all bodies politic of the minor class, *i. e.*, all private cor-

porations as distinct from municipal or government corporations. The relations of individuals to one another as members of a corporation, are controlled by the corporations themselves in their organized capacities, but these regulations must conform to the law of the state, and are ultimately relegated for their enforcement to the government. But the control of corporations in their relations to one another, in their relations to the government, and in their relations to the individuals of the state, gives rise to a body of *corporation* law.

Again, since government is differentiated as the organ of regulation, the organ itself must be controlled—the conduct of the government must be regulated. This gives rise to what I shall denominate *government* law.

It has been seen that the conduct of a state, and of the individuals of a state, has relation to other states. The rules for the regulation of this conduct gives rise to *international* law.

As no common government exists between states to enforce international law, armies are organized, and for the regulation of their conduct *military* law is developed.

The conduct pertaining to the relation which exists between men and deity gives rise to the organization of ecclesiastical bodies. For the government of these bodies, and for the enforcement of the rules of conduct which religion imposes, *religious* law appears.

The law, then, the body of rules which the state endeavors directly or indirectly to enforce, may be properly classed as follows :

1. Personal law.
2. Property law.
3. Corporation law.
4. Government law.
5. International law.
6. Military law.
7. Religious law.

In addition to this classification of law on the basis of the particulars of conduct to be controlled, another fundamental

classification is found running through and interwoven with each of the others. This classification depends upon the method by which regulation is accomplished. General rules of conduct are established, and these general rules are applied to specific acts. Thus duties and rights, or rights active and passive, are determined. Usually, to these rules determining rights, the individuals of the state conform their conduct; but to an important extent they do not. To the extent that conduct is conformatory to the law, right is done; to the extent that conduct is not in conformity with the law, wrong is done. Now, government does not attempt to control conduct by directly enforcing right-doing, but indirectly, by punishing wrong-doing, and this gives rise to a body of laws relating to wrongs, which may be designated as *criminal law*.

Crimes may be committed against personal law, property law, corporation law, government law, international law, military law, and religious law; so that the classification of law relating to rights and duties furnishes the proper basis for the classification of law relating to wrongs, *i. e.*, crimes.

COURSE OF EVOLUTION OF THE STATE.

In considering the particulars of conduct that states have attempted to regulate we find they can be classified on still another basis than that presented in considering the subject of law. Conduct may relate to the perpetuation of the species, or it may relate to the welfare of the individual. Though this classification serves no important purpose in the study of the subject of law, yet it is necessary in considering the constitution of the state and the form of the government.

In the earlier and lower stages of society, conduct relating to the perpetuation of the species is held to be of primary importance, while conduct relating to the welfare of individuals is held to be of secondary importance, in such a manner that the organization of the state is based primarily on the former and secondarily on the latter.

In the perpetuation of the species the functions of reproduction are dependent upon the biologic organization of mankind, dividing the human race into two classes—*male* and *female*—and the very earliest states yet discovered have their plans of organization based on sex, and composed of classified bodies of kindred.

This may be stated in another way. In the earliest forms of society conduct involving the relations of the sexes and the relations of kindred arising therefrom was first brought under regulation. The primary and principal source of disagreement among primitive men at the inception of organized society grew out of their desires for the possession of women. Men first came into conflict with one another on account of women, and to live together in peace it became necessary to organize government and enact law regulating marriage and kinship relations arising therefrom. The government and the law relate primarily to kinship, regulating the relation of the sexes, and the relation of the several members of bodies of kindred; that is, the state is organized on kinship. Governmental functions are performed by men whose positions in the government are determined by kinship, and rules relating to kinship and the reproduction of the species constitute the larger body of the law. The law regulates marriage and the rights and duties of the several members of a body of kindred to one another. Individuals are held responsible only to their kindred, and certain groups of kindred are held responsible to other groups of kindred. When other conduct, such as the distribution of game taken from the forest, or fish from the sea, is regulated, the rules or laws pertaining thereto involve considerations of kinship, and this is extended so far that a large body of rights to property are kinship rights. In this manner all the earlier forms of the state of which we have knowledge are based on kinship. This gives us kinship society and tribal government.

In the highest forms of social organization discovered in the nations of civilization the regulation of conduct embodied in the government and the law, relates chiefly and primarily to the welfare

of the individual, and secondarily to the perpetuation of the species; and of the conduct relating to the welfare of the individual that which relates to property has an overwhelming predominance.

In the earliest stages of society small wealth is accumulated, and industries for the production of property and wealth are comparatively undeveloped. In the higher stages of society greatly accumulated wealth is found, and industries are differentiated and industrial organizations multiplied beyond all others. As, therefore, the organs of government must be adapted to its functions, the plan of government in such a state must be based upon property. Thus property, society, and national government are constituted.

In kinship states the fundamental classification of the people for the purposes of government is by kindred; in property states the fundamental classification of the people for purposes of government is by territory. Between these stages—the lowest and the highest—many intermediate forms are found. No hard and fast lines can be drawn. A clear distinction can be made only between the lowest and the highest. Survivals of kinship society exist in all governments where position, *i. e.*, office, in the government is hereditary, while property society with the government of the highest civilization is reached only by republics.

The history of the constitution of the state is the history of the evolution of kinship society into property society.

There is yet another way by which this evolution may be characterized, namely, by the progressing differentiation of the organs of the state, and by the progressing integration of states. The differentiation of organs in the state is represented in three ways:

First, by the multiplication of organs of government.

Second, by the multiplication of the orders of units and the specialization of the subordinate units so that subordinate organizations perform special functions. Thus cities may be divided into wards, counties into towns.

Third, by the multiplication of corporations for specific purposes. Such organizations in the lowest stages of society appear only in a

crude form, but as society advances they are perfected and greatly multiplied, until in modern civilized society a state becomes a vast plexus of corporations.

In the earlier stages of society each state is small, being composed only of a body of kindred by consanguinity and affinity, actual or artificial. As each state is small many states are found. In order that unification of states may progress organization by kinship must give way, and gradually it does give way, to be replaced by organization on a property basis. Organization on a property basis appears in many ways, but chiefly in two. First, captives in war and other persons are made slaves, and themselves become property; and, second, a particular form of property—land—gradually comes to be of prime importance, and is at last taken as the basis of the primary classification of the state, which is territorial.

By various processes of alliance, by conquest, by development of feudalities, and by slavery, states are integrated, and by the development of the organs of government and private corporations, the classes of the state are differentiated, and with this the plan of the state is changed from a kinship to a property basis.

COURSE OF EVOLUTION OF GOVERNMENT.

The earliest form of government of which we have knowledge consists of an assembly composed of men, from which are excluded all deemed too young or too old to exhibit due wisdom. This assembly is the law-making power, *i. e.*, the legislature, and the law applying power, *i. e.*, the court. It is, in fact, the body of able men meeting to confer and decide upon conduct, and is essentially legislature and judiciary undifferentiated. This assembly has a presiding officer who obtains the position by common consent or formal choice, and who sometimes acts as an executive officer in carrying out the decisions of the assembly. But this executive power, though it may sometimes, does not invariably inhere in the presiding officer.

Sometimes, and perhaps usually, the executive power is delegated to a committee of the assembly. The committee may be appointed temporarily to carry out a specific determination of the assembly, or it may be a standing committee to carry out a class of determinations. The form of government thus described probably exists at present in some of the tribes of Australia and elsewhere, as such accounts are given by travelers and students of ethnology; but these accounts are incomplete, and have been made by persons not thoroughly trained in this branch of anthropologic research, so that altogether the existence of such a government is at present uncertain. It is also probable that this form of government has existed in past times among tribes who have now advanced beyond it. The line of argument on which this is based cannot here be presented, and it is but fair to say that positive conclusions have not been reached.

A somewhat higher form of government has been discovered in America and elsewhere, which may be more thoroughly described. In this the assembly of the people is more definitely organized. The presiding officer is formally selected, and his tenure of office is for life, unless otherwise formally determined by the assembly for cause. In addition to this, a chief or system of chiefs is found whose duties are executive. The chief is also a member of the assembly, but is not a chief by virtue of such membership but by choice of the people. The chieftaincy is never hereditary.

In the most highly developed governments the three great classifications of governmental functions are highly, though not completely, differentiated, giving rise to legislative, executive, and judicial departments, represented by the *assembly*, the *ruler*, and the *court*.

The assembly itself is elaborately organized and differentiated into two or more correlated divisions. Executive functions are highly differentiated and distributed among various classes of officers over whom the ruler presides. The judicial functions also are differentiated, and superior and subordinate courts are organized. Between the two forms thus described, many intermediate forms

are discovered, and the course of progress is wayward and various. In the earlier part of this course, judicial functions are to a greater or less extent assumed by the executive, and for a long time this division of the functions of the court between the two departments of government continues—being claimed, now by one, now by the other. At times, too, in the course of progress, legislative functions are assumed by the executive department, and a conflict is waged for supremacy. At last, by various processes, the court is organized.

Three of these processes must here be mentioned. As states increase in size the business of adjudication becomes so great that proper attention cannot be given to the multiplicity of cases arising. Under these circumstances committees of the assembly are appointed with judicial powers, at first extremely limited but gradually enlarged, until courts are developed. On the other hand, where judicial power has to a greater or less extent been assumed by the executive department, the rulers find themselves overwhelmed with business and appoint subordinates in the first instance to adjudicate specific cases, but gradually the powers of these subordinates are enlarged, until courts are thus established.

Again, ecclesiastical bodies claiming superior virtue and wisdom sometimes assume to adjudicate, but such adjudication is gradually relegated to specified officers of the body, and thus ecclesiastical courts are developed.

The courts originating from the assembly, from the ruler, and from the ecclesiastical body alike, may be more or less multifarious. When they spring up in the same state their jurisdiction is at first imperfectly defined. Each strives for supremacy, and thus jurisdiction overlaps jurisdiction. This conflict ultimately results in the organization of a system of courts integrated in a superior court and differentiated by the establishment of a variety of inferior courts with jurisdiction more carefully defined, the function of the inferior courts being controlled and restricted within proper bounds by appeal to the superior.

Thus, at last, the functions of the primitive assembly, originally legislative, executive, and judicial, are differentiated, and the legislature, the ruler, and the court are established.

THE COURSE OF EVOLUTION OF LAW.

In the development of the tribe into the nation, conduct develops from extreme simplicity to extreme complexity, and for the regulation of conduct the law must likewise develop.

PERSONAL LAW.

A large part of personal law belongs to family law. Perhaps the earliest and lowest form of the family is that in which brothers in a group marry their own sisters in a group: all the brothers are the husbands of all the sisters. The family is thus composed of husbands and wives, parents and children, grandparents and grandchildren, and brothers and sisters. Collateral lines of kinship are not established. There are no uncles and aunts, no male cousins and female cousins, and no nephews and neices. This is known as the Punaluan family, or system of kinship.

Another form, known as the Malayan family, or system of kinship, is found, involving a larger tribe and a higher organization. In this, a group of men, being brothers, marry a group of women, sisters to one another, but not sisters to the men whom they marry. For the regulation of this form of communal marriage a tribe is divided into classes. Often there are three classes, which are divided into male and female—making in all, six. Let these be represented by letters: A represents a male class, and A¹ a female class. The class A are brothers and the class A¹ are their sisters. B represents a class, and B¹ a class, brothers and sisters; and C and C¹ are like classes. Then the class A, being brothers to one another, may not marry their sisters A¹, but marry the class of women B¹ who are sisters to one another. The class B marry the class C¹, and the class C marry the class A¹. Now, in this family, descent is in the female line. The children then of A and B¹ will belong to the

class B and B¹, the children of B and C¹ will belong to the class C and C¹, and the children of C and A¹ will belong to the class A and A¹, and through these cycles the generations pass.

The kinship system is further developed in this family, and gives brothers and sisters, fathers and mothers, sons and daughters, grandfathers and grandmothers, and grandsons and daughters. It also gives aunts and uncles. The children call their father and father's brothers, all fathers, and their mother and mother's sisters, all mothers; but their father's sisters are aunts, and their mother's brothers are uncles. The children of their father's brothers they call brothers, the children of their mother's sisters they call sisters; but the children of their father's sisters they call cousins, and the children of their mother's brothers they call cousins.

This family is widely spread in Australia and elsewhere, and the kinship system is still more widely spread, as it exists among all the tribes of North and South America, in parts of Europe, Asia, and Africa, and in some of the islands of the sea.

The Punaluan system of kinship is known to exist, but the form of communal marriage is not known. The Malayan system of kinship and marriage is known. Its simplest and most common form only has been given.

The development of this into the polygamic and monogamic systems of marriage is accomplished in diverse ways among many tribes. The group of husbands and group of wives constituting one family comes to be very large and narrower restrictions are adopted—thus, sons of one mother will be married in a group to the daughters of another mother, and various other restrictive regulations will appear, but all involving a common principle, namely, that the husbands and wives have no choice. Selection is made by legal appointment.

Legal appointment develops into individual selection through three processes:

First. The parties interested, consulting their own wishes, elope; and marriage by elopement, though illegal at first, is made legal on

the day of jubilee. This procedure widely prevails among the North American Indians.

Second. It oftentimes happens that in the vicissitude of life certain groups, or families, of sisters increase in number, while the groups of brothers to whom they belong decrease in number, and *vice versa*. Under these circumstances a few men are entitled to many wives, and the law holds this to be justice. In such cases it may happen that a man who belongs to a large male group having rights of marriage in a small female group, will, with his friends, capture a bride from some larger group of women. This is always resisted, and conflict ensues. If the capturing party succeed, the law then holds that the warfare was the final arbitrament and the controversy ends; and if the capturing party fail, the contest must, in like manner, cease.

Third. Marriage by capture develops into a third form. A man being entitled to more than one woman is challenged by a man who, by the vicissitudes of life and death, is entitled to none, and the right to a woman is thus decided by wager of battle between the two men immediately interested. This duel is gradually regulated by law in such a manner that fatal results do not ensue, and the conflict ends controversy, and thereafter the disputants are, themselves, friends.

These three forms of marriage—by elopement, by capture, and by duel, are gradually regulated, and come to be recognized as legal, and so communal marriage is developed into polygamic and monogamic marriage; and thus by a long process the Malayan system of marriage and the Malayan system of kinship are developed into the monogamic family and kinship. But it usually happens that the system of kinship embodied in the terms of relationship, remains longer than the system of marriage, that is, the evolution of language does not keep pace with the evolution of customary law, so that we find many tribes having the Malayan system of kinship, yet not having the Malayan system of marriage,

but having polygamic marriage and marriage by legal appointment, and with these, marriage by elopement, by capture, and by duel.

In the family law of very early society descent is in the female line, the control of the children belongs to the mother and her consanguineal kindred, and the father and his kindred have no control over the family. The husband is but the guest of the wife and her friends.

During the process of development from communal marriage, and the system of kinship involved, to monogamic marriage and its system of kinship, a change from descent in the female to descent in the male line occurs, and with this change the control of the family is relegated to the husband and father, and rapidly this control becomes absolute, and the patriarchal family is established, in which the father has power of life and death over his wives and children and all their descendants; but gradually this power is regulated by law.

A method by which descent is changed from the female to the male line, that is, by which mother-right is changed to father-right, appears among the North American Indians. When the gentes of which a tribe is composed do not live in a compact village but are spread over a large area of country, so that each gens lives alone, separated by miles of distance from the others, the consanguineal relatives of the wives, who are the guardians and masters of the family, are not present and cannot exercise control. Under such circumstances authority is gradually assumed by the husbands, and the line of descent is ultimately changed. There may be other methods by which this change is made.

PROPERTY LAW.

Property law is naturally divided into two classes—property in *chattels* and property in *land*.

To a large extent in primitive society chattel property is communal—owned by classes or clans—but a few articles, such as clothing, ornaments, and some implements and utensils, are owned by in-

dividuals, yet no large accumulation of these things is permitted to the individual. Under these circumstances barter and sale are clogged because individuals cannot freely exchange—the consent of two bodies of persons being necessary therefor. As industries are differentiated, that is, in the beginning of the differentiation of labor, articles are exchanged by regulation—the price is always the legal price. Inheritance is by clan, not from parent to child.

In the progress of social organization communal chattels become personal property. Inheritance by clan gradually becomes inheritance by nearest of kin, and, finally, wills are invented, and inheritance by designation of the owner is developed. Then with the development of money, barter is changed into sale, and legally fixed price, by certain curious processes, is changed into competitive price.

In the most primitive society the land is held by the state and used only as a hunting ground, or as the source of vegetal food naturally grown thereon, while the streams and coasts are held as fisheries; but where rude cultivation begins small areas are re-deemed, and usually cultivated land is held by tribe or clan. Thus, tenure to cultivated land is communal.

Communal ownership is gradually developed into ownership in severalty by a variety of processes interesting in themselves, but multifarious and complex, so that the subject may not here be treated at large.

With the change in the character of tenure to property from communal to individual ownership, there grows up a large body of law relating to contract.

[The consideration of the evolution of corporation law is omitted.]

GOVERNMENT LAW.

In lower tribes, government law consists of a few simple rules, regulating the manner of calling the assembly, the order of deliberation, and the method of announcing the decision, while the

chief or committee executes the law in obedience to a few equally simple rules. In higher nations, where the legislature, the ruler, and the court appear, government law is greatly elaborated. The legislature is organized by processes provided by law, and controlled by organic, or constitutional, law, and a body of parliamentary law is developed regulating its method of procedure. The executive department is governed by organic law, by law emanating from the legislature, and by a large body of rules originating within itself. The judicial department is also controlled by organic law, by directory laws emanating from the legislature, and by the rules of the court, involving a complex system of procedure.

From such simplicity to such complexity do we arrive by the processes of evolution.

CRIMINAL LAW.

Of crimes resulting from the regulation of the relations of the sexes, marriage within the proscribed group is held to be the most heinous in primitive society. It is never condoned, never compounded. Infidelity after marriage may be condoned or compounded.

Crimes relating to personal injuries include murder, maiming, and slander. Murder may be punished by the taking of life—not necessarily the life of the murderer, but one of his clan. But murder may be compounded, and primitive law fixes the value of individuals according to sex and rank. Murder may be atoned for by substitution, that is, the murderer may be expatriated, driven from his family, and thus become dead to his own people, and then he may be adopted by the injured family and made to replace the murdered person. Thus the wife of the murdered man may adopt the murderer for her husband, and, in this adoption he loses his own name and all relations of kinship, and accepts the name and kinship relations of the murdered man.

Maiming is punished by maiming—"an eye for an eye and a tooth for a tooth"—and maiming may be compounded, and the value of the several parts of the body is specified by law.

Slander is punished the same as the crime alleged in the slander, and slander may be pleaded as a justifying cause for murder and maiming ; slander may also be compounded.

In primitive society by far the largest body of crimes is included under the practice of witchcraft, and this is terribly punished. Abnormal conditions of body, aberrations of mind, and infelicities of temper are all interpreted as evidences that the possessors thereof are uncanny people, and to a large extent deafness and blindness before old age from causes that cannot be readily understood, and all loathsome or strange diseases, are likely to be attributed to sorcery, so that the practice of witchcraft is everywhere believed in, and witches and wizards are multiplied. Witchcraft is punished by death, but after conviction in the court, appeal to supernatural decision is always permitted, and thus we have the origin of trial by ordeal.

Criminal law in the higher stages of society need not be characterized, but certain lines of evolution may be pointed out. The groups in which marriage is prohibited, giving rise to the crime of incest, change from artificial groups to groups constituted by degrees of consanguineal kinship, male and female. Thus classifications by artificial and analogic characteristics give place to classifications by essential and homologic characteristics. Gradually too, in the progress of society from the earliest to the latest stages, the motive of the murderer is considered, and accidental killing and maiming are differentiated from willful murder and other personal injuries, and in the higher stages of society, such willful injuries, being essential crimes, are not compounded nor atoned for by substitution.

In the crimes which come from the unlawful acquisition of property the punishment by multiple restitution found, in the lower states, is superseded by fines which go to the state and by imprisonment. In the lower stages of society property crimes are thefts ; in the higher stages, property crimes are thefts and frauds.

In the lower stages of society a large body of the crime is witch-

craft, and this gradually disappears with the progress of culture. It should be noticed that in early society there is a very large body of artificial crimes—especially those relating to sorcery. Again, there is a large body of artificial crimes relating to personal injuries, from the fact that willful injury is not differentiated from accidental injury. In the course of evolution such artificial crimes are eliminated from the law. On the other hand, by reason of the ever increasing complexity of the relations of men, the classes of real crimes are multiplied.

There is yet another line of progress. In primitive society two principles are found to exist side by side as fundamental theories in the administration of the law.

The first is that justice must be done—that justice which the primitive law recognizes.

The second, that there must be end to controversy so that peace may prevail and society be not disorganized; and this must be accomplished though the former fail.

To secure end to controversy there is resort to two methods:

First, days or other periods of jubilee are appointed at which all crimes, except murder and incest, are forgiven. In the lowest societies it is a day of jubilee, coming once a year; in higher societies it is a year of jubilee, coming at longer periods. With progressing society this method of ending controversy is adopted in the case of crimes which are manifestly artificial in the state of culture to which the people have arrived, and by this means willful murder is at first differentiated from accidental killing.

Second, controversy is terminated and the punishment of artificial crime is avoided by the establishment of cities of refuge.

Now, cities of refuge come to be such in a curious manner. In the early history of mankind, cities are states and autonomous; one state does not punish the crimes committed in another; and men committing crimes flee from their own states to others, become incorporated therein by adoption, and thus secure immunity from punishment. When on the first organization of nations,

two or more city-states are consolidated and placed under one general government, certain cities often remain as places of refuge, but with an important restriction, namely, that the crimes belong to the classes which have been here described as artificial.

Thus days of jubilee and cities of refuge are important agencies in the evolution of criminal law.

The growth of law in its entire course is governed in many important respects by the theory of the origin of law and the source of its authority. This subject involves the discussion of the evolution of philosophy and cannot now be undertaken. It is the highest and most important subject with which the mind of man can grapple, as it involves the whole theory of human conduct—the ethics of mankind.

In the foregoing the organization of society for government, *i. e.*, for purposes of regulation, has been considered. This is the organization to secure peace. The organization of society by the differentiation of industries and their integration through commerce has been necessarily omitted.